Senator Jerry Hill, 13th Senate District

SB 1465 – Construction Defect Settlement Reporting to CSLB

IN BRIEF

Requires contractors to report construction defect settlements over $1 million to the Contractors State License Board (CSLB) within 90 days of the date that the licensee has knowledge of the final judgement. Requires insurers to report final settlements to CSLB within 30 days.

BACKGROUND

Construction contractors and their regulation became the focus of sharp scrutiny in California and abroad after a fifth-story balcony at a Berkeley apartment complex collapsed on June 16, 2015, killing six people and seriously injuring seven of their friends. All were students of Irish descent and all but one were visiting the U.S. for the summer.

Investigative news reports soon revealed that the company that constructed the apartment complex, Segue Construction, had paid $26.5 million in construction defect lawsuit settlements in the three years before the Berkeley balcony gave way.

Segue Construction is a contractor licensed and regulated by the CSLB. But CSLB, the state board that licenses contractors in California, did not know about the cases because the law does not require contractors to report such settlements.

At the time, the CSLB's enforcement chief said that had the board known, "we would have absolutely taken action." Such knowledge, he emphasized at a later hearing in the Capitol, would have triggered an investigation.

Section 7000.6 of the Business and Professions Code provides: Protection of the public shall be the highest priority for the Contractors' State License Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SB 465 (Hill) SIGNED IN 2016

SB 465 sought to close the regulatory gaps revealed by the Berkeley balcony catastrophe of 2015.

SB 465 required the CSLB to study the settlement reporting issue and report its findings by January 1, 2018. Specifically, the bill directed the CSLB to consult with licensees, consumers and other stakeholders in its study of judgments, arbitration awards and settlements that resulted from construction defect claims involving rental residential units. The goal was to determine whether the board's ability to protect the public "would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of those claims."

CSLB REPORT

CSLB's December 2017 SB 465 report concluded with a recommendation: "the ability of the Board to protect the public as described in Section 7000.6 would be enhanced by regulations requiring licensees to report judgments, arbitration awards, or settlement payments of construction defect claims for rental residential units."

Almost 54 percent of contractors surveyed, nearly 96 percent of consumers surveyed and about 63 percent of insurers surveyed said such regulations would help the board protect consumers, according to the CSLB's report to the Legislature.

Having the data would "be a good tool in our toolbox," board member Beltran said at the CSLB's meeting on December 7. He urged his colleagues to concur and directed staff to finalize the board's report on the study, submit it to the Legislature and to work with Senator Hill to craft reporting requirement legislation. A link to the CSLB study conducted pursuant to SB 465 is here: http://www.cslb.ca.gov/Resources/Reports/SB_465_Report.pdf

THE SOLUTION

The majority of complaints CSLB receives are filed by consumers relating to construction on single family homes. Because of that fact, and because there is already a comprehensive legislative scheme for resolving construction defect disputes regarding single family homes (SB 800 (Burton) – 2002), this legislation does not apply to single family homes. Rather, SB 1465 is intended to provide CSLB with more information about contractors and sub-

contractors who settled claims for construction defects on multi-family rental dwellings. Unlike complaints filed by homeowners, construction defect complaints filed by owners of large rental developments are more likely to be settled by respective parties' attorneys and are not reported to CSLB, as evidenced by the litigation history of the Berkeley balcony construction. This information will enable CSLB to better regulate its licensees which may be performing a pattern and practice of defective construction.

RESPONSE TO OPPOSITION

SB 1465 ensures that CSLB's receipt of any settlement information would be subject to their long-standing complaint investigation procedures. As such, it is not accurate to say that a "general contractor does nothing wrong and ultimately prevails…still has a negative mark on their records." Rather, the information reported by this new statutory requirement would be treated no different than other complaints CSLB receives. The civil judgement or settlement information will be reviewed by CSLB staff to determine if a formal investigation is warranted. CSLB's existing investigation practices would require an investigation to determine the culpable licensee(s) and if a violation of Business and Professions Code (BPC) 7109 – Poor Workmanship, or BPC 7110 – Code Violation can be supported beyond a "clear and convincing" standard (as opposed to the lower "preponderance" standard used in civil courts). In other words, the mere receipt of a civil judgement or settlement is not disclosable on a CSLB license record – nor is it sufficient evidence in and of itself to support a violation of the BPC. To determine if an actionable violation has occurred, CSLB will need to perform an investigation that will generally require interviewing building department personnel, and or securing the services of an industry expert to determine if the work was performed to code and or minimum trade standards. If a trade standard or code violation is supported by investigation, disciplinary action may be taken by CSLB against the Prime and or applicable subcontractor(s). Per existing CSLB procedures, a general contractor "that did nothing wrong" and attempted to compel a subcontractor to correct faulty work without success would not be subject to disciplinary action. The disciplinary action would be taken against the culpable subcontractor. However, in the case of Segue Construction (Berkeley balcony contractor), the general contractor was held accountable for poor workmanship performed by numerus subcontractors because Segue did not appropriately oversee the various subcontractors' work or hold them accountable to comply with code and trade standard requirements.

CONTRACTORS vs SUBCONTRACTORS

The mere act of reporting does not equate to disciplinary action against the licensee. The CSLB's investigation would focus on culpable parties, i.e. if the allegation were that a roof was not installed correctly, the CSLB would open an investigation into the roofing contractor, who may very well be a subcontractor. Any action taken by CSLB against a licensee would require evidence as described above to prove the roofing contractor deviated from code and or minimum trade standard requirements.

OTHER BOARDS ALREADY REQUIRE

Other construction related boards already require their licensees to report settlement information: the Board of Professional Engineers, Land Surveyors, and Geologists (BPELSG) and the California Architects Board (CAB).

Architects (and their insurers) must report judgments, settlements, and arbitration awards in excess of $5,000 in actions involving fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture.

Engineers (and their insurers) must self-report felony convictions, convictions of crimes related to duties and functions of engineers, civil action settlements or administrative actions in excess of $50,000 relating to fraud, deceit, misrepresentation, breach or violation of contract, negligence, incompetence, or recklessness by the licensee in the practice of professional engineering, and civil judgments, binding arbitration awards or administrative actions relating to those topics in excess of $25,000.

Physicians, osteopaths, podiatrists, and physician assistants (and their insurers) must self-report medical malpractice judgments and arbitration awards in any amount, and settlements over $30,000.

Accountants (and their insurers) must self-report settlements or arbitration awards in excess of $30,000, and judgments in any amount involving dishonesty, fraud, negligence, breach of fiduciary responsibility, embezzlement, and preparation of fraudulent financial statements; additionally.